IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICTOF PENNSYLVANIA

MOON SHINE, L.P.,	:	
	:	NO.
Plaintiff	:	
	:	
v.	:	JURY DEMANDED
	:	
NXT GENERATION LLC, and GLOBAL MANUFACTURING, ASSOCIATES, INC.,	:	ELECTRONICALLY FILED
	:	
	:	
	:	
Defendants	:	

COMPLAINT

Plaintiff Moon Shine, L.P., files this complaint against NXT Generation LLC and Global Manufacturing Associates, Inc., for copyright infringement pursuant to 17 U.S.C. § 101 *et seq.* and violation of the Digital Millennium Copyright Act, 17 U.S.C. § 512 *et seq.*, and states as follows:

1. Plaintiff Moon Shine, L.P. is a Pennsylvania limited partnership with a business address of 10594 Route 35, Mt. Pleasant Mills, PA 17853

2. Plaintiff designs, markets, and sells camouflage designs and patterns which are used to decorate a wide variety of goods including apparel, firearms, cutlery, and other products.

3. Defendant NXT Generation LLC is a limited liability company with a business address of 225 W. Bartges Street, Akron, Ohio.

4. Defendant Global Manufacturing Associates, Inc., is a corporation with a business address of 264 E. Garfield Road, Aurora, Ohio.

5. Defendants market and sell a full line of realistic hunting toys, including crossbows and rifles, for children.

Jurisdiction and Venue

6. This Court has original and exclusive jurisdiction of this action under 28 U.S.C. § 1338(a) because the action arises under the Copyright Act, 17 U.S.C. § 101 *et seq*.

7. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 since Defendants are subject to personal jurisdiction in this jurisdiction, a substantial part of the events or omissions giving rise to the claim occurred in this jurisdiction, and a substantial part of Plaintiff's copyrighted property that is the subject of the action is situated in this jurisdiction.

Facts

8. Plaintiff creates camouflage designs for application to all types of products which are marketed to consumers that enjoy hunting, angling and other outdoor activities and that take pride in their outdoor-focused lifestyle.

9. Plaintiff's camouflage patterns are unique in that they are intended for fashion and not for concealment and; therefore, contain colorful and recognizable designs applied to traditional concealment camouflage pattern elements like leaves and twigs.

10. Plaintiff sells products that feature its camouflage patterns in its own retail store, on its website, through various retail partners, and at trade shows, concerts, and sporting events.

11. Plaintiff has obtained copyright registrations for the Muddy Girl and Wildfire camouflage designs. *See* registrations VA1-730-073 and VAU1-097-482 attached hereto as Exhibit 1.

12. The Muddy Girl pattern is Plaintiff's most popular design and is one of the best-selling fashion camouflage patterns in the country.

13. In addition to products sold in finished form, Plaintiff has an exclusive arrangement with T.W.N. Industries, Inc. (TWN), a company located in Florida, through which Plaintiff authorizes TWN to produce and sell water transfer films that bear Plaintiff's camouflage patterns and which films can be applied as a means to decorate an infinite number of other products with Plaintiff's camouflage patterns.

14. The films produced by TWN are applied to hard surfaces using a process known as "water transfer printing" which allows the pattern printed on TWN's films to be permanently transferred to a hard surface.

15. Common applications for TWN's water transfer films are firearm stocks, knife hilts, vehicle body panels, helmets, and hard plastic goods.

16. Plaintiff receives a royalty for the sale of films that bear Plaintiff's camouflage patterns.

17. Defendants previously purchased from TWN films that bore the Muddy Girl and Wildfire patterns and applied those patterns to various toy products which Defendants then sold under the MUDDY GIRL and WILDFIRE trademarks which are the trademarks that Plaintiff owns and uses on products that bear the Muddy Girl and Wildfire patterns. The toy products included toy crossbows that fire soft projectiles.

18. Defendants sold the toy products through major retailers such as Cabela's, Amazon, Bass Pro Shops, Bed Bath & Beyond, and Toys 'R Us, and through its own website, www.nxtgentoys.com.

19. On information and belief, sometime in 2016, Defendants stopped ordering and purchasing water transfer films bearing Plaintiff's camouflage pattern from TWN due to price and sourced films, or other

means of decoration, bearing identical or nearly identical derivatives of Plaintiff's Muddy Girl and Wildfire patterns from an alternate source that is not unauthorized to produce and provide such patterns.

20. In January 2017, Plaintiff discovered that Defendants were using unauthorized Muddy Girl and Wildfire designs, or nearly identical derivatives of those designs, on its toy products without permission.

21. Defendants, for example, displayed their NXT-PX10-MG crossbow which features a pink, black and white camouflage pattern that is highly similar to, if not identical to, Plaintiff's Muddy Girl pattern, at the Archery Trade Association show in Indianapolis in January, 2017. *See* Exhibit 2. This show is billed as "the bow industry's largest trade show."

22. The pink, black, and white camo design on Defendants' NXT-PX10-MG product is substantially similar to Plaintiff's Muddy Girl pattern but is believed to be an unauthorized copy or derivative.

23. Defendants also sell a product with an orange, red, yellow, black, and white camouflage design which is substantially similar to Plaintiff's Wildfire design. The Defendants' orange, red, yellow, black, and white camouflage design is believed to be an unauthorized copy or derivative of Plaintiff's Wildfire design.

24. Defendants sell the NXT Generation PX10-MG and PX10-WF on Amazon. *See* Exhibit 3.

25. On its website, Defendant NXT markets and sells a product called a "Crossbow Pistol-Tactical Crossbow Combo in Woodland Blaze." One of the products in the package utilizes Plaintiff's Wildfire design, and the other product in the package utilizes the similar but unauthorized copy or derivative of Plaintiff's Wildfire design. *See* Exhibit 4.

26. By using designs which are identical to, or which are substantially similar derivatives of Plaintiff's copyrighted designs, Defendants have infringed and are continuing to infringe on Plaintiff's valid copyrights for the Muddy Girl and Wildfire designs. The full extent of Defendants' infringing activity will be learned through further investigation and discovery.

Count I
Violation of 17 U.S.C. § 106(1)

27. Plaintiff incorporates by reference Paragraphs 1 through 26 of the Complaint as if set forth in full.

28. Plaintiff is the sole proprietor of all rights, title and interest in and to the copyright of the camouflage patterns entitled "Muddy Girl" and

"Wild Fire" registered with the United States Office of Copyright pursuant to 17 U.S.C. § 102(5) and 411(a). *See* Exhibit 1.

29. All of the products discussed above contain material wholly original with Plaintiff in a copyrightable subject matter under the laws of the United States.

30. Defendants NXT Generation and Global Manufacturing Associates infringed Plaintiff's copyrights, in violation of the Copyright Act, 17 U.S.C. § 101(a), by knowingly and willfully copying, distributing, modifying or otherwise using the copyrighted camouflage designs without the consent or authorization of the Plaintiff.

31. In addition to, or in the alternative, Defendants have infringed Plaintiff's copyrights by directing or contributing to the infringement by third parties.

32. As a direct result of the Defendants' actions, Plaintiff has suffered monetary damages in an amount to be determined through discovery and further investigation.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants jointly and severally, as follows:

A. For an accounting by Defendants of their activities in connection with their infringements of Plaintiff's copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to their infringement(s);

B. For Plaintiff's actual damages, in an amount to be determined at trial;

C. For Defendants' direct and indirect profits attributable to their infringements, including but not limited to those direct and indirect profits derived from the advertising, promotion, marketing, and sale of infringing products in an amount to be determined at trial;

D. In the alternative, at Plaintiff's option an award of statutory damages in lieu of actual damages for the infringement of any one or more of their works described above, in an amount to be determined at trial;

E. An award of statutory damages for each and every violation by Defendants of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202, *et seq.*;

F. Plaintiff's actual attorneys' fees, court costs, taxable costs, and the cost associated with the retention, preparation and testimony of expert witnesses;

G. For both temporary and permanent injunctions barring Defendants, their agents, employees and/or servants, from infringing Plaintiff's copyrights in any manner whatsoever, including the advertising, marketing, and sale of infringing products, and further barring said Defendants from publishing through any visual media, and from selling, marketing or otherwise distributing products with Plaintiff's designs and/or derivatives thereof; and

H. For such other relief as the Court determines to be just and equitable.

Count II
Violation of 17 U.S.C. § 106(2)

33. Plaintiff incorporates by reference Paragraphs 1 through 32 of the Complaint as if set forth in full.

34. Defendants knowingly and willfully prepared derivative designs based upon the copyrighted works of the Plaintiff, in violation of 17 U.S.C. § 106(2).

35. In addition to, or in the alternative, Defendants have knowingly and willfully infringed Plaintiff's copyrights by directing or contributing to the infringement by third parties.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants jointly and severally, as follows:

A. For an accounting by Defendants of their activities in connection with their infringements of Plaintiff's copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to their infringement(s);

B. For Plaintiff's actual damages, in an amount to be determined at trial;

C. For Defendants' direct and indirect profits attributable to their infringements, including but not limited to those direct and indirect profits derived from the advertising, promotion, marketing, and sale of infringing products in an amount to be determined at trial;

D. In the alternative, at Plaintiff's option an award of statutory damages in lieu of actual damages for the infringement of any one or more of their works described above, in an amount to be determined at trial;

E. An award of statutory damages for each and every violation by Defendants of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202, *et seq.*;

F. Plaintiff's actual attorneys' fees, court costs, taxable costs, and the cost associated with the retention, preparation and testimony of expert witnesses;

G. For both temporary and permanent injunctions barring Defendants, their agents, employees and/or servants, from infringing Plaintiff's copyrights in any manner whatsoever, including the advertising, marketing, and sale of infringing products, and further barring said Defendants from publishing through any visual media, and from selling, marketing or otherwise distributing products with Plaintiff's designs and/or derivatives thereof; and

H. For such other relief as the Court determines to be just and equitable.

Count III
Violation of 17 U.S.C. § 106(3)

36. Plaintiff incorporates by reference Paragraphs 1 through 35 of the Complaint as if set forth in full.

37. Defendants knowingly and willfully distributed and sold products with the derivative designs which were based upon the copyrighted works of the Plaintiff, in violation of 17 U.S.C. § 106(3).

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants jointly and severally, as follows:

A. For an accounting by Defendants of their activities in connection with their infringements of Plaintiff's copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to their infringement(s);

B. For Plaintiff's actual damages, in an amount to be determined at trial;

C. For Defendants' direct and indirect profits attributable to their infringements, including but not limited to those direct and indirect profits derived from the advertising, promotion, marketing, and sale of infringing products in an amount to be determined at trial;

D. In the alternative, at Plaintiff's option an award of statutory damages in lieu of actual damages for the infringement of any one or more of their works described above, in an amount to be determined at trial;

E. An award of statutory damages for each and every violation by Defendants of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202, *et seq.*;

F. Plaintiff's actual attorneys' fees, court costs, taxable costs, and the cost associated with the retention, preparation and testimony of expert witnesses;

G. For both temporary and permanent injunctions barring Defendants, their agents, employees and/or servants, from infringing Plaintiff's copyrights in any manner whatsoever, including the advertising, marketing, and sale of infringing products, and further barring said Defendants from publishing through any visual media, and from selling, marketing or otherwise distributing products with Plaintiff's designs and/or derivatives thereof; and

H. For such other relief as the Court determines to be just and equitable.

COUNT IV
Violation of 17 U.S.C. § 1202 *et seq.*

38. Plaintiff incorporates by reference Paragraphs 1 through 37 of the Complaint as if set forth in full.

39. Additionally and/or alternatively, one or more of the Defendants violated section 1202 *et seq.* of the Digital Millennium Copyright Act ("DCMA"), 17 U.S.C. § 1202.

40. In creating the derivative designs identified above, Defendants intentionally removed and/or omitted Plaintiff's copyright management information, or had the information removed or omitted from the derivative designs.

41. The Defendants then marketed, distributed, and sold products which did not include the copyright management information, knowing that the information had been removed, knowing or having reasonable grounds to know that such behavior would induce, enable, facilitate, or conceal the infringement of Plaintiff's copyrighted works.

42. In addition to, or in the alternative, Defendants have infringed Plaintiff's copyrights by directing or contributing to the infringement by third parties.

43. Plaintiffs are entitled to seek and recover statutory damages not exceeding $25,000 for each act committed in violation of their rights under 17 U.S.C. § 1202 *et seq.,* plus their reasonable attorneys' fees.

WHEREFORE, Plaintiff demands that judgment be entered in its favor and against the Defendants jointly and severally, as follows:

A. For an accounting by Defendants of their activities in connection with their infringements of Plaintiff's copyrights in and to the above-described works, as well as of the gross profits and revenue attributable to their infringement(s);

B. For Plaintiff's actual damages, in an amount to be determined at trial;

C. For Defendants' direct and indirect profits attributable to their infringements, including but not limited to those direct and indirect profits derived from the advertising, promotion, marketing, and sale of infringing products in an amount to be determined at trial;

D. In the alternative, at Plaintiff's option an award of statutory damages in lieu of actual damages for the infringement of any one or more of their works described above, in an amount to be determined at trial;

E. An award of statutory damages for each and every violation by Defendants of the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 1202, *et seq.*;

F. Plaintiff's actual attorneys' fees, court costs, taxable costs, and the cost associated with the retention, preparation and testimony of expert witnesses;

G. For both temporary and permanent injunctions barring Defendants, their agents, employees and/or servants, from infringing

Plaintiff's copyrights in any manner whatsoever, including the advertising, marketing, and sale of infringing products, and further barring said Defendants from publishing through any visual media, and from selling, marketing or otherwise distributing products with Plaintiff's designs and/or derivatives thereof; and

H. For such other relief as the Court determines to be just and equitable.

McNEES WALLACE & NURICK LLC

Dated: April 5, 2017

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